



**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1977

No. 77-1608

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

RAMON PALACIOS HERNANDEZ,

Petitioner

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
SECOND APPELLATE DISTRICT DIVISION FOUR
OF THE STATE OF CALIFORNIA**

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**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1977

**UNITED STATES SUPREME COURT No.
COURT OF APPEAL No. 2D CRIM 30452
SUPERIOR COURT No. CR 12464**

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

RAMON PALACIOS HERNANDEZ

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR
OF THE STATE OF CALIFORNIA**

The petition of RAMON PALACIOS HERNANDEZ, prays that a Writ of Certiorari issue to review the opinion and judgment of the Court of Appeal of the State of California, Second Appellate District, Division Four, rendered in these proceedings on December 13, 1977; and to review the judgment of the California Supreme Court denying Petitioner's Petition for hearing in that Court by minute order dated February 9, 1978.

OPINIONS BELOW

The Judgment of Commitment of the Superior Court of Ventura County appears at Page "A1" 163 of the Reporter's and Clerk's Transcript of the proceedings in Ventura Superior Court Case No. CR12464, Volumes I, II and III which have been lodged with this Court and marked Appendix "A1", "A2" and "A3". The Appellant's Opening Brief filed in the Court of Appeal of the State of California has been lodged with this Court and marked Appendix "B". The Respondent's Brief, filed with the Court of Appeal of the State of California has been lodged with this Court and marked Appendix "C". Appellant's Reply Brief filed with the Court of Appeal of the State of California has been lodged with this Court and marked Appendix "D". The Opinion of the Court of Appeal of the State of California filed December 13, 1977, has been lodged with this Court and is marked Appendix "E". Appellant's Petition For Hearing in the Supreme Court of California filed January 3, 1978, has been lodged with this Court and is marked Appendix "F". The Supreme Court of the State of California denied Appellant's Petition For Hearing without opinion on February 9, 1978, Appendix "G".

JURISDICTION

The order of the Supreme Court of the State of California denying Petitioner's Petition for Hearing was entered on February 9, 1978. See Appendix "G", lodged with this Court. This Petition for Certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

1. Whether the search warrant issued in the instant case was issued upon probable cause established by affidavit or otherwise?
2. Whether the California Court erred in failing to excise from the Declaration in Support of Application for Search Warrant information tainted with illegality?

CONSTITUTIONAL PROVISION INVOLVED **CONSTITUTION OF THE UNITED STATES** **AMENDMENT IV**

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF FACTS

On September 23, 1976, James L. Hager, a Deputy Sheriff of the Ventura County Sheriff's Department executed a document entitled "Affidavit In Support of Search Warrant", Appendix A, p. 47), upon which a Search Warrant was issued by the Honorable Charles R. McGrath, Judge of the Municipal Court, County of Ventura, State of California, (A1 pp. 35 through 38), which resulted in the seizure of certain items of contraband from the premises located at 1941 Elsinore Avenue, Oxnard, California, (A1 pp. 48 through 59), which proved to be the residence of Appellant, (A3 p. 69, lines 19, 20).

The Affidavit In Support of Search Warant, (A1 pp. 38 through 47) was analyzed in Appellant's Points and Authorities In Support of Motion To Suppress, (A1 p. 5, lines 6-28, p. 6, lines 1-28, and p. 7, lines 1 and 2), as follows:

ANALYSIS OF DECLARATION

IN SUPPORT OF SEARCH WARRANT

PART A: Page 1 is a description of the premises.

PART B: Page 2 is a description of property to be seized.

PART C: Pages 2, 3, 4 and 5 line 1 sets forth the qualifications of the officer.

PART D: Page 5, lines 2-17, set forth that the Affiant learned in 1974 that the defendant had been convicted in 1972 in Federal Court for heroin sales, had acted as a police informant with good results, and had been placed on probation.

PART E: Page 5, lines 18-28, page 6, lines 1-5, set forth that the Affiant and Sergeant Robertson arrested a subject for "under the influence" who identified his source as Gina Nunez.

He was given \$50, driven to Gina's house, where he purchased five ballons of heroin.

PART F: Page 6, lines 6-10, set forth that Gina was driving a car registered to Angel Tirado.

PART G: Page 6, lines 11-15, sets forth that Officer Jess Velasquez stated that he, Velasquez, had current intelligence that Tirado was dealing heroin through several girls in Oxnard.

PART H: Page 6, lines 16-28, page 7, lines 1-5, set forth that Tirado was arrested on September 22, 1976, with heroin, money, gun, and some amphetamine tablets, and that a couple of hours later Affiant and Detective Robertson arrested Nunez.

PART I: Page 7, lines 6-14, sets forth that Affiant and Detective Robertson executed a Search Warrant on Nunez residence and found amphetamines, heroin paraphernalia, used ballons containing powder, and a color picture of Nunez and Tirado.

PART J: Page 7, lines 15-28, page 8, page 9, lines 1-2, set forth the Statements of the Confidential Informant as follows:

(a) That the C.I. met with the Affiant and Robertson on September 23, 1976, and told them that Tirado gave C.I. 30 to 60 ballons per day which C.I. would deal for money.

(b) That about two weeks before the date of the declaration, C.I. had accompanied Tirado to his connection's residence, watched him enter the residence and return with two to three ounces of heroin, and further, that C.I. had tested the heroin for Tirado, helped him cut and package it and had even sold some.

(c) That C.I. had been to the residence a total of two times but had remained in the car on each occasion.

(d) That on September 21, 1976, Tirado delivered 30 ballons to C.I., telling C.I. that he had obtained it from the same connection, and that he had cut it three times.

(e) That C.I. went with Affiant and Detective Robertson and pointed out to them the residence, which address turned out to be 1941 Elsinore Avenue, Oxnard, California.

PART K: Page 9, lines 3-14, sets forth that the Affiant checked the cross-director and D.M.V. and determined that both 1941 Elsinore and a Chevrolet pickup parked in front thereof were listed to defendant.

It was stipulated that, with respect to Part G, Officer Velasquez had received the information over the telephone but couldn't remember from whom he got it, (A1, p. 84, lines 3-14).

It was further stipulated that the informant, characterized within the affidavit as confidential, was, in fact, Gina Nunez, (A1, p. 85, lines 13-16).

With respect to Part I, Gina Nunez testified that she had never had her photograph taken with Tirado, (A3, p. 29, lines 5-7), and Officer Hager testified that he had no idea of the whereabouts of the photograph, but that it might have been shredded in a shredding machine, (A3, p. 60, lines 21-26, A3, p. 64, lines 7-28, A3, p. 65, lines 1-5).

The events leading to the arrest of "Tirado", mentioned in Parts F, G, H, I and J of the Affidavit, are contained in Appendix "A2" pages 173-453, which constitutes the Reporter's Transcript of proceedings concerning criminal charges brought against him. Appendix "A2" was incorporated in its entirety into the case at bar, and can be summarized as an arrest of a Spanish surnamed individual which resulted from two plainclothes police officers deciding to follow "Tirado" because they thought he was driving a car owned by another, but a check with the Department of Motor Vehicles showed that it was not, (A2, p. 199, lines 7-10), and that they continued to follow "Tirado", wait for him, follow him again, wait for him again, follow him again, and ultimately stop him for a "routine" traffic stop. The officers were in an unmarked car, and at least one had an "afro" hairstyle, none of which visibly imputed to "Tirado" that they were policemen. "Tirado" took evasive action to avoid these individuals, but never violated one traffic law until the alleged "rolling stop" made near the point of arrest, after a long, visual and

unusual "hare and hound" game engaged in by the officers, (Appendix A2, pp. 172-473).

Petitioner's various motions to exclude evidence were denied at the trial court level, and a Judgment of Commitment was made. Petitioner then appealed said Judgment to the California Court of Appeal, contending, among other things, that the search warrant was not issued upon probable cause, (see Appendix B), the Respondent filed a Respondent's Brief, (see Appendix C), and Petitioner filed a Reply Brief, (see Appendix D). Thereafter the Court of Appeal affirmed the Judgment by a written but unpublished opinion, (see Appendix E), and Petitioner filed his Petition for Hearing in the California Supreme Court, (see Appendix F).

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW DENIES PETITIONER THE PROTECTIONS OF AMENDMENT IV WHICH AFFORDS FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURES.

This case is singular and deserving of the attention of the United States Supreme Court because, if allowed to stand, it will establish precedent for two entirely novel procedures for justification of search and seizures.

(1) **The Harass and Goad Procedure.** Under this procedure, officers need not have probable cause to arrest or detain, or resort to onerous preparation of documents. All that need be done is for one to drive an unmarked car, dress as one most calculated not to look as a police officer,

be a narcotic officer in the midst of a narcotic investigation, pick out somebody one would like to stop and identify, enervate that somebody by following him all over town, stopping when he stops, following when he leaves, making sure that he sees one and becomes genuinely upset, and, then, finally waiting until that somebody violates some minor traffic rule. The last, of course, is optional, if no minor violation occurs, make one up if one doesn't feel like spending the entire day at it, (A2, p. 223), and,

[2] **The Ex Nihilo Nihil Fit Procedure.** From nothing nothing comes. Admittedly, novel is the application here given to this respected phrase of antiquity. Usual in the term is the definition that nothing amounts to nothing, but the California Courts have, should this method be upheld, shown unusual creativity in giving the term a meaning that "from nothing comes actually something". In this theory, an admittedly unreliable informant, may make a statement, not against self interest, which may be corroborated by a number of pieces of information, none of which is legally sufficient in and of itself (admittedly) to make a sufficient showing of proximate cause. Essential to this procedure is the use of tainted evidence acquired under the Harass and Goad Procedure, and the availability of a shredding machine in the event the subscribing witness is put to proof as to any documentary evidence relied upon, (see Appendix A3, p. 60, lines 21-26, A3, p. 64, lines 7-28, A3, p. 65, lines 1-5).

One of the virtues of the above described procedures is that they are easily learned. For instance, the officers who discovered the Harass and Goad Procedure were able to teach their fellow officers within minutes, on the very same day, after their arrest of "Tirado" how to take his car without his permission and drive it to the vicinity of his girl friend's house, attempt to break and enter a trailer unrelated to his girl friend's house, and break and enter the girl friend's house all without any resort to judicial process whatsoever, (see Appendix A2, pp. 231-243, A2, p. 381).

If all that has been written herein appears to be humorous, it is not so intended to be. The truth is that law and order are breaking down in California, and that the events described herein are leading to a dangerous situation in the community which should be stopped rather than encouraged by the type of cavalier opinion rendered in the Court of Appeal, (see Appendix E) which purport to condone illegal acts under cover of federal law.

In the event that the United States Supreme Court is actually a guardian of the truth, it is respectfully submitted that this case, rubber stamped although it be, is truly the one to do something about.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion.

Respectfully submitted,

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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and
Respondent,

v.

RAMON PALACIOS
HERNANDEZ,

Defendant and
Appellant.

2D CRIM. NO. 30452

(Sup.Ct.No. CR 12464)

NOT FOR PUBLICATION
IN THE OFFICIAL REPORTS

COURT OF APPEAL-SECOND DIST.
FILED
Dec. 13, 1977
CLAY ROBBINS, JR. Clerk

THE COURT*

Ramon Palacios Hernandez was convicted by plea of possessing a pistol after having previously been convicted of a felony (Pen. Code, §12021) and possession of heroin (Health & Saf. Code, §11350). Concurrent state prison sentences were imposed. He appeals seeking review of the denial of his motion to suppress evidence pursuant to Penal Code section 1538.5. He contends: "No probable cause to issue search warrant was established by affidavit or otherwise."

* files, P.J., KINGSLEY, J., JEFFERSON (Bernard), J.

"Following Aguilar, (Footnote 1) California courts have held that for an affidavit based on an informant's hearsay statement to be legally sufficient to support the issuance of a search warrant, two requirements must be met: (1) the affidavit must allege the informant's statement in language that is factual rather than conclusionary and must establish that the informant spoke with personal knowledge of the matters contained in such statement; and (2) the affidavit must contain some underlying factual information from which the magistrate issuing the warrant can reasonably conclude that the informant was credible or his information reliable." (People v. Hamilton, 71 Cal.2d 176, 179-180.) The affidavit in this case sufficiently meets each of these requirements. The detailed information which the informant (Nunez) gave concerning her narcotics distribution activities with Tirado was independently corroborated in significant respects, making it reasonable for the magistrate to believe the portion of her statement which identified appellant's residence as the source of supply. (See People v. Hall, 42 Cal.App.3d 817, 823; People v. West, 3 Cal.App.3d 253.) The trial court's decision to reject appellant's attempt to traverse the facts set forth in the affidavit was justified by its exclusive power to pass on the credibility of the witnesses appearing before it.

The judgment is affirmed.

NOT FOR PUBLICATION IN
THE OFFICIAL REPORTS.

APPENDIX "E"

1. Aguilar v. Texas, 378 U.S. 108.

